APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 81-2711

UNITED STATES OF AMERICA

v.

JOHN W. FRIEL,

Appellant

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA
C. A. No. 80-00315-01

Argued June 7, 1982

Before: ADAMS and WEIS, *Circuit Judges* and
BLOCH, *District Judge* *

Judgment Order

After considering all contentions raised by appellant, namely, that the district court erred (1) in denying appellant's several motions for judgment of acquittal, in that the appellee failed to prove a violation of 18 U.S.C. § 1341 as set forth in the indictment, (2) in denying

* Hon. Alan N. Bloch, United States District Court for the Western District of Pennsylvania, sitting by designation.

appellant's motion for a mistrial when the principal witness for the appellee spontaneously made reference to the fact that she had taken a lie detector test; (3) in refusing to make available to appellant matters bearing on the credibility of a crucial prosecution witness, Rachel Light, allegedly confidential, because it was part of her probation file; and (4) in failing properly to charge the jury on the question of mailing, in the absence of any direct evidence presented by appellee of the use of the mails; (5) in failing to grant a new trial when the United States Attorney engaged in prejudicial misconduct by deliberately and intentionally, in an effort to inflame the jury, made references to the sexual preferences of the appellant and his witnesses; and (6) by failing to grant a new trial when the United States Attorney engaged in prejudicial misconduct by suppressing and concealing reports of a fire expert, which were exulpatory [sic] and consistent with appellant's defense; it is

ADJUDGED AND ORDERED that the judgment of the district court be and is hereby affirmed.

By THE COURT,

ARLIN M. ADAMS, *Circuit Judge*

ATTEST:

SALLY MRVOS
Sally Mrvos, *Clerk*

DATED: June 15, 1982

APPENDIX B

IN THE
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Criminal No. 80-315

UNITED STATES OF AMERICA

v.

JOHN W. FRIEL

Memorandum-Order

AUGUST 19, 1981

POLLAK, *J.*

John W. Friel and Gary Richard Lance were indicted on September 17, 1980 for mail fraud in connection with an arson scheme. 18 U.S.C. § 1341. After a series of continuances at the request of defense counsel, the trial commenced on February 9, 1981, and culminated in Lance's acquittal and Friel's conviction on one count of mail fraud.[1] Sentencing was set for April 14, 1981. Motions for a new trial and judgment of acquittal were filed March 9, 1981, along with Friel's request that his sentencing be continued until after the notes of testimony had been transcribed and made the basis for additional motions for a new trial or judgment of acquittal. I granted that request.

1. At the close of the Government's case, I entered a judgment of acquittal as to both defendants on the second count of mail fraud, having found that the evidence as to mailing was insufficient to go to the jury.

On July 10, 1981, after the transcription of the notes of testimony, the "completed motion" for a new trial and/or judgment of acquittal was finally filed. The Government's reply was filed July 20, 1981.

The only issue discussed in Friel's memorandum is whether the Government offered sufficient proof of mailing, with respect to Exhibit 7, a letter mailed by Friel's then attorney, Malcolm Waldron, Jr., Esq., to the Security Insurance Group in Hartford, Connecticut, which enclosed a proof of loss statement. That statement described losses from a fire which the Government alleged Friel had set.

The proof of mailing consisted of the following circumstantial evidence: (1) the letter originated in Philadelphia, Pennsylvania, and found its way to Hartford, Connecticut; (2) an employee of the insurance company in Hartford testified that the letter came in the mail, based on a general practice he was aware of that such materials were sent by the mails; and (3) the words, at the bottom of the letter, "certified mail, return receipt requested."

This is not a "clear" failure of the Government to make out its proof. *Burks v. United States*, 427 U.S. 1, 17 (1978). On the contrary, I am satisfied that a reasonable jury could conclude the letter and its enclosure were sent through the United States mails. 18 U.S.C. § 1341.

I have considered Friel's other assignments of error, unsupported by memoranda: I remain persuaded that the several trial rulings challenged by Friel were correct, for reasons sufficiently stated at the time.

Accordingly, Friel's motions for a new trial and judgment of acquittal are DENIED and sentencing is set for 9 a.m. August 28, 1981 in Courtroom 13B, 601 Market Street, Philadelphia, Pennsylvania.

/s/ LOUIS H. POLLAK
Pollak, *J.*

APPENDIX C

UNITED STATES DISTRICT COURT
FOR EASTERN PENNSYLVANIA

Docket No. 80-00315-01

UNITED STATES OF AMERICA

vs.

JOHN W. FRIEL,

Defendant

Judgment and Probation/Commitment Order

August 28 1981

In the presence of the attorney for the government Joseph Gontram, the defendant appeared in person on this date with counsel, OSCAR N. GASKINS, ESQUIRE.

• • •

There being a verdict of GUILTY, Defendant has been convicted as charged of the offense of mail fraud in violation of Title 18 USC § 1341.

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of THREE (3) YEARS.

Sentence shall commence September 11, 1981, unless an appeal has begun.

• • •

Signed by U.S. District Judge

/s/ LOUIS H. POLLAK
Louis H. Pollak
Date August 28 1981

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ROBERT M. SILVERMAN

MALCOLM H. WALDRON, JR.
OF COUNSEL

June 1, 1979

Security Insurance Group
1000 Asylum Avenue
Hartford, Connecticut 06101

Re: Bromwells Inc.
Policies - 335959
335960
Date of Loss 5/7/79

Gentlemen:

Please be advised that I represent the above captioned insured in connection with their loss of May 7, 1979. Enclosed herewith please find a proof of loss in the amount of $40,000. covering the business interruption policy, and a proof of loss in the amount of $100,000. covering the contents, together with a list of the inventory.

Very truly yours,

MALCOLM H. WALDRON, JR.

MHW,JR./cw

encls.

cc: General Adjustment Bureau

Certified Mail

Return Receipt Requested

GOVERNMENT EXHIBIT 7

APPENDIX D

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